



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-5171



Bruce Bascom  
RR 1 Box 137  
Alstead, NH 03602

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
No. AF 2000-072**

Re: Bascom Maple Farm Inc.

**December 21, 2000**

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Bruce Bascom, pursuant to RSA 146-C:10-a and Env-C 601.05. The Division is proposing that fines totaling \$2,000 be imposed against Bruce Bascom for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Bruce Bascom is an individual having a mailing address of RR 1 Box 137, Alstead, NH 03602.

**III. Summary of Facts and Law Supporting Claim(s)**

1. RSA 146-C:10-a authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C
2. Pursuant to RSA 146-C:10-a, I, the Commissioner has adopted Env-C 607 to establish the schedule of fines for violations of RSA 146-C.
3. Bruce Bascom is the owner of one 10,000 gallon #2 fuel oil underground storage tank ("UST") system located at Bascom Maple Farm Inc., Sugarhouse Road, Alstead, NH, further identified as UST #0-115387 ("the Facility").
4. The Facility is subject to the requirements of RSA 146-C and the rules adopted pursuant to that chapter, NH Admin. Rules Env-Wm 1401.
5. Env-Wm 1401.32 requires all existing steel USTs be protected from corrosion no later than December 22, 1998, by meeting the requirements of Env- Wm 1401.32(i).

6. If a UST does not have corrosion protection, Env-Wm 1401.320) requires that the UST be permanently closed.
7. Env-Wm 1401.33(b) requires all existing metal piping that routinely contains regulated substances and is in contact with the soil or other backfill material be protected from corrosion no later than December 22, 1998.
8. Division records show one 10,000 gallon steel UST and metal piping system without corrosion protection has not been permanently closed.

#### **IV. Violations Alleged**

1. Bruce Bascom has violated Env-Wm 1401.32 by failing to protect one existing steel UST from corrosion or performing permanent closure no later than December 22, 1998.
2. Bruce Bascom has violated Env-Wm 1401.33 by failing to protect one existing steel piping system that routinely contained a regulated substance and is in contact with the soil or other backfill material from corrosion no later than December 22, 1998.

#### **V. Proposed Administrative Fines**

1. For the violation identified in IV.1. above, Env-C 607.03(e) specifies a fine of \$1,000 per violation. For the one violation noted above, the Division is seeking a total fine of \$1,000.
2. For the violation identified in IV.2. above, Env-C 607.03(e) specifies a fine of \$1,000 per violation. For the one violation noted above, the Division is seeking a total fine of \$1,000.

**The total fine being sought is \$2,000.**

#### **VI. Hearing, Required Response**

Bruce Bascom has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, January 22, 2001 at 9:00 a.m. in Room C-110** of the DES offices at 6 Hazen Drive in Concord, NH.

**Pursuant to Env-C 601.06, Bruce Bascom is required to respond to this notice.** Please respond **no later than January 8, 2001** using the enclosed form as follows:

If Bruce Bascom plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.

2. If Bruce Bascom chooses to waive the hearing and pay the proposed fine, please have an

authorized representative sign the waiver (lower portion) and return it with payment of the fine to Mr. Ballentine.

3. If Bruce Bascom wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine and call Mr. Ballentine to indicate Bruce Bascom's interest in settling.

Bruce Bascom is not required to be represented by an attorney. If Bruce Bascom chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If Bruce Bascom wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled,** Bruce Bascom must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If Bruce Bascom does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

## **VII. Determination of Liability for Administrative Fines**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Bruce Bascom committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Bruce Bascom committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

- \* Pursuant to Env-C 601.09(c), the fine will be reduced by 10% for each of the circumstances listed below that Bruce Bascom proves, by a preponderance of the evidence, applies in this case:
  1. The violation was a one-time or non-continuing violation, and Bruce Bascom did not know about the requirement when the violation occurred, and the violation has not continued or reoccurred as of the time of the hearing, and any environmental harm or threat of harm has been corrected, and Bruce Bascom did not benefit financially, whether directly or indirectly, from the violation.
  2. At the time the violations were committed, Bruce Bascom was making a good faith

effort  
to comply with the requirement that was violated.

3. Bruce Bascom has no history of non-compliance with the statutes or rules implemented by  
DES or with any permit issued by DES or contract entered into with DES.

4. Other information exists which is favorable to Bruce Bascom's case which was not known  
to the Division at the time the fine was proposed.

\*\*\*\*\***IMPORTANT NOTICE**\*\*\*\*\*

**The hearing that has been scheduled is a formal hearing.** The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation( s) alleged above and that the fine( s) should be imposed. The hearing is Bruce Bascom's opportunity to present testimony that Bruce Bascom did not commit the violation s and/or that the fine s should not be imposed, or that the fine(s) sought should be reduced. If Bruce Bascom has any evidence, such as photographs, business records or other documents, that Bruce Bascom believes show that Bruce Bascom did not commit the violation( s ) or that otherwise support Bruce Bascom' s position, Bruce Bascom should bring the evidence to the hearing. Bruce Bascom may also bring witnesses ( other people) to the hearing to testify on Bruce Bascom' s behalf.

If Bruce Bascom wishes to have an informal meeting to discuss the issues, Bruce Bascom must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If Bruce Bascom has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

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Philip J. O'Brien, Ph.D., Director  
Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2 1999)

cc: Gretchen Rule, DES Enforcement Coordinator  
Susan Alexant, DES Hearings and Rules Attorney  
James Ballentine, DES Enforcement Paralegal  
Thomas R. Beaulieu, Chief  
Lynn A. Woodard, P.E., Supervisor

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

APPEARANCE

-I/we will attend the hearing scheduled for Monday, January 22, 2001 at 9:00 a.m. in Room C-110 of the DES offices at 6 Hazen Drive in Concord, NH.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

WAIVER OF HEARING

\_\_\_\_ I/we certify that I/we understand my/our right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of \$2,000 paid to "Treasurer, State of New Hampshire" is enclosed.\*

\* If you pay by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

James Ballentine, DES Enforcement Paralegal  
Department of Environmental Services  
6 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095